Wan Nafi bin Wan Ismail v Hajjah Lijah bte Omar & Ors

HIGH COURT (KOTA BHARU) — CIVIL SUIT NO 22–79–1989
NIK HASHIM JC
29 AUGUST 1996

Civil Procedure *— Pleadings — Fraud — Particulars of fraud must be pleaded — Whether court may consider the fact which was not pleaded*

Evidence *— Burden of proof — Plaintiff's age in dispute — How to prove a person's age — Whether identity card prima facie proof of its contents — National Registration Regulations 1990 regs 23 & 24*

Limitation *— Land — Recovery of — Accrual of cause of action — Whether action was statute-barred — Limitation Act 1953 s 9(1)*

On 31 January 1955, the plaintiff transferred a piece of land to the first defendant upon consideration of RM500. Through the said transfer the first defendant registered the plaintiff's share of the land in her name and subsequently transferred it to the second and third defendants. On 8 July 1989, the plaintiff commenced an action to recover the said land from the defendants on the ground that at the material time he was a minor. According to him, he was born on 27 July 1940 which means that he was 15 years and 7 months on 31 January 1955, that is the day the transfer of the land was effected. However neither his identity card nor any document was ever produced to support his age during the trial. The plaintiff had his new identity card with him which was shown to the court but it was not tendered as an exhibit. The plaintiff's counsel submitted that the identity card is conclusive proof of the age. The plaintiff further alleged that the first defendant had obtained his thumb print on the memorandum of transfer without his consent. The plaintiff also attempted to establish a case of fraud by saying that the memorandum of transfer ('exh D1') was a forgery. The defendants pleaded that since the transfer took place sometime in the year 1955, the action is therefore statute-barred under the Limitation Act 1953 ('the Act').

Held, dismissing the action:

(1) A person's age may be proved by direct evidence of those present at his birth or production of his certificate of birth (see p 538C–D); *Chua Kim Suan v Ang Mek Chong* [1988] 3 MLJ 231; *Tan Khay Seng v Tan Kay Choon & Anor* [1990] 1 MLJ 51 followed.

(2) As the identity card of the plaintiff was not produced as an exhibit at the trial, there was no evidence at all to support the plaintiff's date of birth. A document cannot be admitted into evidence and marked as such until it is properly proven

(see p 539A); *Chong Khee Sang v Pang Ah Chee* [1984] 1 MLJ 377 followed.

(3) In any event, an identity card cannot be accepted as prima facie evidence of facts stated therein. There is no presumption of truth concerning the contents of identity cards. The burden of proving the truth of the contents of an identity card shall be on the person to whom the identity card has been issued (see p 539B).

(4) From the evidence in this case, the plaintiff was not a minor at the time the transfer was executed (see p 539C).

(5) The nature of the claim of the plaintiff is of an action for recovery of land. Being a cause of action of such a nature, it falls within s 9(1) of the Act which, inter alia, bars any action being brought after the expiration of 12 years from the date on which the right of action accrued to the plaintiff, ie 31 January 1955. The plaintiff filed his action on 8 July 1989 which is 34 years after the cause of action accrued to him. Therefore his claim was too late and was barred by limitation (see p 540D–F).

(6) Parties are bound by their pleadings and they cannot be allowed to raise a different or fresh case without due amendment properly made. The court is not entitled to decide a suit on an issue not raised by the parties. As such the court was not obliged to consider the allegation of fraud which the plaintiff had failed to prove and which was not even pleaded specifically in the plaintiff's statement of claim (see p 540G–I).

[Bahasa Malaysia summary

Pada 31 Januari 1957 plaintif telah memindahmilik sebidang tanah kepada defendan pertama dengan balasan sebanyak RM500. Melalui pindahmilik tersebut, defendan pertama telah mendaftarkan bahagian tanah plaintif tersebut ke atas namanya dan seterusnya telah memindahmiliknya kepada defendan kedua dan ketiga. Pada 8 Julai 1989, plaintif telah memulakan satu tindakan untuk mendapat kembali tanah tersebut daripada defendan atas dasar bahawa pada masa pindahmilik tersebut dia adalah seorang bawah umur. Menurutnya, dia dilahirkan pada 27 Julai 1940 yang bermakna bahawa dia telah berumur 15 tahun dan 7 bulan pada 31 Januari 1955, iaitu pada hari pindahmilik tersebut dilaksanakan. Namun demikian, kad pengenalannya ataupun sebarang dokumen lain tidak dikemukakan langsung untuk membuktikan umurnya semasa perbicaraan tersebut. Plaintif mempunyai kad pengenalannya yang baru dengannya yang telah diperlihatkan kepada mahkamah tetapi ianya tidak dikemukakan sebagai ekshibit. Peguam bagi plaintif berhujah bahawa kad pengenalan adalah bukti muktamad mengenai umur seseorang. Plaintif selanjutnya menyatakan bahawa defendan pertama telah mendapatkan cap ibu jarinya di atas memorandum pindahmilik tanpa kebenarannya. Plaintif juga telah cuba membuktikan suatu kes fraud dengan menyatakan bahawa memorandum pindahmilik tersebut ('eks D1')

merupakan suatu pemalsuan. Defendan pula telah menghujahkan bahawa oleh kerana pindahmilik tersebut telah berlaku kira-kira dalam tahun 1955, maka tindakan tersebut adalah dibataskan secara statutori di bawah Akta Had Masa 1953 ('Akta tersebut'.)

Diputuskan, menolak tindakan ini:

(1) Umur seseorang boleh dibuktikan dengan keterangan langsung daripada orang yang hadir semasa kelahirannya ataupun melalui pengemukaan surat beranaknya (lihat ms 538C–D); *Chua Kim Suan v Ang Mek Chong* [1988] 3 MLJ 231; *Tan Khay Seng v Tan Kay Choon & Anor* [1990] 1 MLJ 51 diikut.

(2) Oleh kerana kad pengenalan plaintif tidak dikemukakan sebagai ekshibit semasa perbicaraan, maka tidak terdapat sebarang keterangan untuk membuktikan tarikh kelahiran plaintif. Sesuatu dokumen tidak boleh diterima sebagai keterangan dan ditandakan seperti itu sehingga ia dibuktikan dengan sempurna (lihat ms 539A); *Chong Khee Sang v Pang Ah Chee* [1984] 1 MLJ 377 diikut.

(3) Apa sekalipun sesuatu kad pengenalan tidak boleh diterima sebagai keterangan prima facie mengenai fakta yang terkandung di dalamnya. Tidak terdapat anggapan kebenaran mengenai kandungan kad pengenalan. Beban untuk membuktikan kebenaran kandungan di dalam kad pengenalan adalah di atas orang yang kepadanya kad pengenalan itu diisukan (lihat ms 539B).

(4) Berdasarkan keterangan dalam kes ini, plaintif bukanlah seorang bawah umur pada masa pindahmilik itu dilaksanakan (lihat ms 539C).

(5) Tuntutan plaintif adalah jenis tindakan untuk mendapat kembali tanah. Oleh kerana tindakannya sedemikian, maka ianya adalah di bawah s 9(1) Akta tersebut yang, antara lainnya, menghalang sebarang tindakan yang dibawa selepas tempoh masa 12 tahun telah berakhir dari tarikh tindakan tersebut terakru kepada plaintif, iaitu pada 31 Januari 1955. Plaintif telah memfailkan tindakannya pada 8 Julai 1989 iaitu 34 tahun setelah kausa tindakan iu telah terakru kepadanya. Maka tuntutannya adalah terlambat dan dihalang oleh batasan masa (lihat ms 540D–F).

(6) Pihak-pihak adalah terikat kepada pliding mereka dan mereka tidak dibenarkan membangkit satu kes yang berlainan atau baru tanpa pindaan yang sewajarnya. Mahkamah tidak boleh memutuskan sesuatu guaman atas isu yang tidak dibangkitkan oleh pihak-pihak. Oleh demikian mahkamah tidak wajib mempertimbangkan dakwaan fraud yang telah gagal dibuktikan oleh plaintif dan yang tidak dipohon secara spesifik dalam pernyataan tuntutannya (lihat ms 540G–I).]

Notes

For cases on particulars of fraud in pleadings, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue), paras 2585–2586.

For cases on limitation in recovery of land, see 9 *Mallal's Digest* (4th Ed), paras 1674–1677.

Cases referred to

Ahmad bin Said v Nacharamal w/o D Subramaniam & Ors [1989] 2 CLJ 1192

Chong Khee Sang v Pang Ah Chee [1984] 1 MLJ 377

Chua Kim Suan v Ang Mek Chong [1988] 3 MLJ 231

Foo Gee Yaw v Loo Koo Biow [1996] 5 MLJ 7

Janagi v Ong Boon Kiat [1971] 2 MLJ 196

Ng Chim & Ors v Low Boon Beng [1994] 3 AMR 1959

Ponnusamy & Anor v Nathu Ram [1959] MLJ 86

Rosita bte Baharom v Sabedin bin Salleh [1992] 1 MLJ 379

Tan Khay Seng v Tan Kay Choon & Anor [1990] 1 MLJ 51

Tengku Ali ibni Almarhum Sultan Sulaiman v Kerajaan Negeri Terengganu Darul Iman [1996] 4 MLJ 374

Yew Wan Leong v Lai Kok Chye [1990] 2 MLJ 152

Legislation referred to

Births and Deaths Registration Act 1957 s 33(1)

Evidence Act 1950 ss 90, 114(e)

Kelantan Land Enactment 1938 ss 2, 98, Sch 24

Limitation Act 1953 s 9(1)

National Registration Regulations 1990 regs 23, 24

Basri bin Yusoff (*Aziz Derashid & Co*) for the plaintiff.

Noraini bte Ismail (*Aini Hayati & Associates*) for the defendants.

Cur Adv Vult

Nik Hashim JC: The plaintiff is praying for an order that the transfer of his land, lot 297 NE 341 Ketereh West, Pangkal Kalong, Kelantan, to the defendants on 31 January 1955, be declared null and void and of no effect on the ground that at the material time he was a minor and further prays that the said land be registered in his name as the registered owner.

The plaintiff in his statement of claim avers that it was the first defendant who obtained his thumb print on a memorandum of transfer and had it registered at the Kota Bharu land office without his consent. He was then 15 years old. Through the said transfer the first defendant registered the plaintiff's share of the land in her name before transferring it to the second and third defendants.

The defendants, in their amended statement of defence, asserted that the transfer was made with the consent of the plaintiff who had

already attained the age of majority. Since the transfer was made upon consideration of RM500 paid by the first defendant to the plaintiff, the transfer of the latter share of the land was therefore valid. The defendants also pleaded that since the transfer took place sometime in the year 1955, the action is therefore statute-barred under the Limitation Act 1953 ('the Act').

There are two main issues for decision in this case:

(1) Whether the plaintiff was a minor on 31 January 1955; and

(2) Whether the cause of action is statute-barred under the Act.

The plaintiff in his testimony at the trial, stated that according to his identity card he was born on 27 July 1940. That means he was 15 years and seven months old on 31 January 1955, that is on the day the transfer of the land was effected. It is significant to note that neither his identity card nor any document was ever produced to support his age during the trial. The plaintiff had his new identity card with him which was shown to the court but it was not tendered as an exhibit.

A person's age may be proved by direct evidence of those present at his birth (see *Cross On Evidence* (5th Ed) at p 637) or by production of his certificate of birth (see s 33(1) of the Births and Deaths Registration Act 1957; see also *Chua Kim Suan v Ang Mek Chong* [1988] 3 MLJ 231; *Tan Khay Seng v Tan Kay Choon & Anor* [1990] 1 MLJ 51). In this case, however, the plaintiff had no birth certificate.

En Basri bin Yusoff, who appeared for the plaintiff, submitted that the identity card is a document which proves conclusively the age of the plaintiff and quoted reg 23 of the National Registration Regulations 1990 ('the Regulations') in support as being applicable in this case. For ease of reference, I reproduce reg 23 which provides:

> Any document purporting to be:
>
> (a) a certificate under the hand of a registration officer certifying that any return required to be made to him under these Regulations or any order made hereunder has not been made;
>
> (b) a statement as to the contents of the register or any book or record kept for the purpose of carrying out the provisions of these Regulations under the hand of the director-general or a registration officer having custody of the register book or record; or
>
> (c) a certificate under the hand of the registrar of criminals that any fingerprint is the fingerprint of a person specified in such certificates shall be prima facie evidence of the facts stated in such certificate or, as the case may be, of the contents of such register, book or record.

With respect to learned counsel, I am unable to agree with his submission. In my view, an identity card is not a certificate nor a record contemplated under reg 23 which can be accepted as prima facie evidence of the facts stated therein. There is no presumption of truth concerning the contents of identity cards. The burden of proving the truth of the contents of an

A identity card shall be on the person to whom the identity card has been issued. Regulation 24(1) provides:

> The burden of proving the truth of the contents of any written application for registration under these Regulations, or *the contents of an identity card, shall be* on the applicant, or on *the person to whom such identity has been issued,*
B or on any other person alleging the truth of such contents. (Emphasis added.)

Unfortunately in this case, the identity card of the plaintiff was not produced as an exhibit at the trial, and without it there is no evidence at all to support the plaintiff's date of birth. A document cannot be admitted into
C evidence and marked as such until it is properly proved (see *Chong Khee Sang v Pang Ah Chee* [1984] 1 MLJ 377). Even assuming the card was produced and marked as an exhibit, but by virtue of reg 24, the burden still lies on the plaintiff to prove the truth of the contents of his identify card. What the plaintiff had in testimony were merely his words which were disputed by the defendants.

D Cik Noraini bte Ismail for the defendants argued that based on the evidence available, the plaintiff was born in 1936 and was not a minor at the material time, ie on 31 January 1955, and as such the transfer of his land to the defendants was valid.

En Zulkifli bin Abdul Rahman ('DW1'), an assistant land
E administrator, testified that by looking at the memorandum of transfer ('exh D1'), he was of the view that the transfer was properly executed and was in accordance with sch 24 to s 98 of the Kelantan Land Enactment 1938, being the law applicable at that time. The owner of the land, Wan Nafi bin Wan Ismail, transferred the land to Lijah bte Omar for a
F consideration of RM500. The land could not have been transferred if Wan Nafi bin Wan Ismail was a minor. The transfer was executed before ADO 11 Abdul Aziz ('ADO 11') and one witness Man bin Che Awang (believed to be the penghulu or penggawa).

After perusing exh D1 and Perserahan No 312/55 Tr No 167/55 (agreed bundle of documents), I find they are primary and original records
G relating to transfer of land of more than 20 years old, and by virtue of their authenticity I am satisfied that the transfer was duly and regularly executed and attested (see ss 90 and 114 (e) of the Evidence Act 1950). Indeed, Wan Nafi bin Wan Ismail himself admitted in exh D1 before ADO 11 and one Man bin Che Awang that he was of full age at the material time. A
H minor under s 2 of the Kelantan Land Enactment 1938 means 'any person of an Asiatic race domiciled in any part of the continent of Asia who has not completed his 18th year and any other person who has not attained the age of 21 years'. According to the record, I hold that the transferor, Wan Nafi bin Wan Ismail could not be a minor.

I The second defendant Wan Fatimah ('DW2'), first cousin of the plaintiff, testified that by comparison of age, she is five years older than the plaintiff. She stated that she stayed beside the plaintiff's house since birth. She used to 'dukong' the plaintiff when he was small. She was born on 14 February 1931 and was 65 years old on the date of hearing of this case (26

August 1996). By her calculations the plaintiff must have been born in 1936. This means in 1955, the plaintiff was about 19 years old. DW2 was present at the Land Office when the plaintiff transferred the land to her mother, Lijah bte Omar. Penghulu Awang (believed to be Man bin Che Awang, the person who verified the identity of the plaintiff) was also present. According to DW2, the plaintiff then was more than 18 years old. Later he left for Thailand and has been staying there ever since 1955. I believe DW2 and find as a fact that at the material time, ie on 31 January 1955, the plaintiff was of full age who had attained the age of 18 and was not a minor. On this ground alone, I consider it is sufficient for the suit to be dismissed.

However, there is another equally important issue pleaded by the defendants which merits consideration by the court — ie whether the claim is statute-barred.

The plaintiff filed the suit on 8 July 1989. He claimed he came to have known about the land only in 1972 when he approached DW2 for the return of his land. On the basis of exh D1, he could not now be heard to say that he knew about the land only in 1972. He knew about it as far back as 31 January 1955 at the time when the transfer was effected. He was the one who transferred the land for value. He only activated his right in 1989, that is 34 years later. Even assuming that his ignorance of the transfer of his land is genuine and that he became aware and knew about it only in 1972, that is 17 years before he filed the suit, nevertheless, he was still five years beyond the limitation period (see judgment of Eusoff Chin J (as he then was, now Yang Amat Arif Chief Justice of the Federal Court) in *Ng Chim & Ors v Low Boon Beng* [1994] 3 AMR 1959 at p 1963). The nature of the claim of the plaintiff is of an action for the recovery of land. Being such a cause of action, it falls within s 9(1) of the Act which, inter alia, bars any action being brought after the expiration of 12 years from the date on which the right of action accrued to him (see *Ponnusamy & Anor v Nathu Ram* [1959] MLJ 86; *Ahmad bin Said v Nacharamal w/o D Subramaniam & Ors* [1989] 2 CLJ 1192). The concept of limitation is that there must be an end to litigation (per Abdul Malek J (as he then was) in *Tengku Ali ibni Almarhum Sultan Sulaiman v Kerajaan Negeri Terengganu Darul Iman* [1996] 4 MLJ 374).

That being so, his claim is too late and is therefore barred by limitation.

Before concluding, I would like to observe on the often quoted topic of the importance of pleadings. They are too important to be ignored and need to be restated. It is settled law that parties are bound by their pleadings and they cannot be allowed to raise a different or fresh case without due amendment properly made. The court is not entitled to decide a suit on a matter on which no issue has been raised by the parties (see *Janagi v Ong Boon Kiat* [1971] 2 MLJ 196; *Yew Wan Leong v Lai Kok Chye* [1990] 2 MLJ 152; *Foo Gee Yaw v Loo Koo Biow* [1996] 5 MLJ 7). Edgar Joseph Jr J (as he then was) in *Rosita bte Baharom v Sabedin bin Salleh* [1992] 1 MLJ 379 at p 391 cited with approval the following

A passage in *The Present Importance of Pleadings* (1960) Current Legal Problems at p 174 by Sir Jack Jacobs:

> As the parties are adversaries, it is left to each of them to formulate his case in his own way, subject to the basic rules of pleadings ... . For the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as much bound by the pleadings of the parties as they are themselves. It is no part of the duty or function of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by their pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce upon any claim or defence not made by the parties. To do so would be to enter the realms of speculation ... . Moreover, in such event, the parties themselves, or at any rate one of them, might well feel aggrieved; for a decision given on a claim or defence not made, or raised, by or against a party is equivalent to not hearing him at all and may thus be a denial of justice (see *Esso Petroleum Co Ltd v Southport Corp* [1956] AC 218, per Lord Radcliffe, at p 241). The court does not provide its own terms of reference or conduct its own inquiry into the merits of the case but accepts and acts upon the terms of reference which the parties have chosen and specified in their pleadings (see *Esso Petroleum Co Ltd v Southport Corp* [1954] 2 QB 182, per Morris LJ at p 207). In the adversary system of litigation, therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called 'any other business' in the sense that points other than those specified in the pleadings may be raised without notice.

In the present case the plaintiff was attempting to establish a case of fraud by saying that exh D1 was a forgery. I disregarded the evidence and the submission of counsel on this point as the plaintiff had failed to prove fraud and fraud was not even pleaded specifically in the plaintiff's statement of claim. The court was not obliged to consider it.

In the result, I found that the plaintiff had failed to prove his case and therefore dismissed the action with costs.

Action dismissed with costs.

Reported by Ng Kian Pin